



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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B-202109

August 4, 1981

The Honorable Peter W. Rodino
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

We are forwarding for your consideration our ^{views} on House bill 3741, 97th Congress, 1st Session, a bill to increase the efficiency of Government-wide efforts to collect debts owed the United States.

On November 19 and 20, 1980, and April 23, 1981, we testified before the Senate Committee on Governmental Affairs in support of earlier legislative proposals, including Senate bill 3160 (96th), Senate bill 591 (97th), and the proposals then under consideration by the Administration, all of which included provisions similar to several of the provisions in House bill 3741. We have provided you with comments on House bills 749, 1243, and 2152 that also contained similar provisions. In these comments, we proposed additional legislation to strengthen debt collection. Some of these proposals have been included in House bill 3741. Also, many of our earlier suggested language changes and other comments have been incorporated in House bill 3741.

We support the purpose of the proposed legislation. It would remove a number of current impediments to Federal collection efforts and provide needed additional collection tools. In addition, we recommend that the bill include a provision for offset of delinquent debts against Federal tax refunds due to debtors and additional language to strengthen sections 3 and 7.

Offset of Federal Tax Refunds

Federal tax refunds are routinely made to many individuals who have not paid debts owed the Government. In March 1979 we reported to the Congress ^{1/} that of a sample of 613 terminated debts totaling \$431,000, up to \$153,000, or 36 percent, could have been collected over a 2-year period by reducing the debtors' tax refunds. We recommended that, on a test basis, delinquent nontax receivables be collected by reducing future income tax refunds due the debtors.

^{1/}"The Government Can Collect Many Delinquent Debts by Keeping Federal Tax Refunds as Offsets," (FGMSD 79-19, March 9, 1979).

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Internal Revenue Service (IRS) expressed reservations about the desirability and practicality of such a program when balanced against the value of concentrating IRS resources and expertise on the administration of tax laws as well as the potential negative effect on the taxpayer withholding system. A proposal in the fiscal 1980 IRS appropriations bill to fund 30 positions for such a test was not adopted.

Several members of Congress, however, were interested in pursuing legislation on this point, and we have continued to develop related information. In response to a request from Senator Sasser, as Chairman of the Legislative Appropriations Subcommittee, we issued a report 1/ last July that pointed out that in 1979 alone, the State of Oregon was able to collect by offset from tax refunds over \$2.4 million in delinquent debts that most likely would have been lost to the State. The State spent only about \$200,000 to collect this amount, while at the same time establishing strict controls to ensure that debtor's rights to due process are protected and that tax refunds are not arbitrarily offset. In testimony before the Senate Governmental Affairs Committee on April 23, 1981, the Director of Oregon's Department of Taxation reported that collections for 1980 were \$3.7 million at a cost of less than \$300,000. We understand that Oregon has experienced no adverse effect on its withholding system.

In supporting this type of offset we wish to make clear that the necessary safeguards to protect debtors against arbitrary offset actions can and must be instituted. In this regard the procedures for IRS offset should be thoroughly tested prior to full implementation. We favor legislation requiring IRS to offset nontax debts on the basis of interagency agreements worked out between IRS and the Federal agencies wishing to refer debts for offset, with the Attorney General having a consultation role in the development of such agreements. This would clearly provide IRS statutory authority for offset and a mandate to follow through to the extent appropriate procedures could be worked out. The interagency agreement would provide a mechanism for resolving due process and other procedural issues. We anticipate that the Attorney General could contribute to resolving differences should the referring agency and IRS be unable to agree on procedures. Finally, we believe that this legislative approach would lend itself to gradual implementation. The Congress might express an intent that IRS work out an agreement with one agency and test that first, rather than attempting to work out a series of agreements at the outset.

We suggest the following language for the amendment:

Section 6402 of the Internal Revenue Code of 1954 is amended as follows:

(1) By amending subsection (a) to read:

"(a) GENERAL RULE. In the case of any overpayment, the Secretary or his delegate, within the applicable

1/"Oregon's Offset Program for Collecting Delinquent Debts Has Been Highly Effective," (FGMSD 80-68, July 17, 1980).

period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax or, in accordance with subsection (c), against any liability in respect of any other debt owed the Federal government, on the part of the person who made the overpayment and shall refund any balance to such person."

(2) By adding the following new subsection (c):

"(c) OFFSET OF GENERAL GOVERNMENT DEBTS. The Secretary or his delegate shall, in consultation with the Attorney General, enter into an agreement with the head of an agency responsible for collection of the general Government debts referred to in subsection (a) establishing procedures for the referral and offset of such debts."

Disclosure to a Consumer
Reporting Agency

Sections 2 and 3 would provide for reporting delinquent debt information to consumer reporting agencies without subjecting these agencies to subsection (m) of the Privacy Act. However, no similar exemption is provided for information entering consumer reporting agency files as a result of Federal efforts to locate a debtor or to purchase a consumer report. Opinions vary as to whether a specific exemption for these activities is necessary. We note, however, that the Department of Justice legal opinion ^{1/} which first gave rise to the need for sections 2 and 3 states that in any case in which information disclosed under contract to a consumer reporting agency represents an addition to that agency's files, the information in the hands of the consumer reporting agency is a system of records to which subsection (m) of the Privacy Act applies. Efforts to obtain a consumer credit report or current address from a consumer reporting agency frequently do add to the consumer reporting agency's files. Consequently, we believe that the following language should be added at the end of section 3 to forestall any concern over using consumer reporting agencies for credit reports and locator services:

"(5) may release information to a consumer reporting agency in order to obtain a credit or locator report on a person administratively determined to be indebted to the agency."

^{1/}October 10, 1979, letter from Office of Legal Counsel to the Chairman, Committee on Veterans Affairs, United States Senate.

Debtor Identity Information

Section 7(b) of House bill 3741 would amend Section 6103(m)(2) of the Internal Revenue Code. This section now authorizes Federal agencies to obtain debtor address information from the IRS but greatly limits an agency's use of the information since it cannot be redisclosed. House bill 3741 would permit disclosure to agents of a Federal agency for collection purposes; however, it would not remove the restrictions against further redisclosure by the Federal agency. Consequently, it appears that an address obtained from IRS could be provided to and used by a collection agency acting as an agent for collection of debts due the Federal agency. However, it probably could not be provided to a consumer reporting agency for the purpose presently authorized by section 3—reporting delinquent debt information to commercial credit bureaus, or for the purposes that our proposed amendment to section 3 would authorize—obtaining locator assistance or purchasing credit reports.

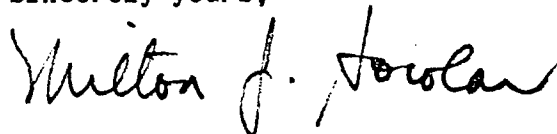
We strongly favor removing any restrictions on redisclosure of IRS mailing address information. We believe that these restrictions prevent Federal agencies from fully carrying out their collection responsibilities and that any possible invasion of taxpayer privacy which might result from the redisclosure of an IRS mailing address is minimal. Consequently, we believe that addresses furnished to Federal agencies for debt collection purposes should lose their identity as tax return information. To achieve this end, section 6103(m)(2) of the Internal Revenue Code should be amended to read as follows:

- "(2) Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in carrying out collection activities relating to such taxpayer in accordance with the Federal Claims Collection Act of 1966 or other statutory authority. Any mailing address disclosed in accordance with the preceding sentence shall no longer be considered 'return information' as defined in subsection (b)(2) of this section."

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We trust that these comments will be useful in your further consideration of House bill 3741. We are providing proposed language for the needed legislation. (See enclosure.)

Sincerely yours,



Acting Comptroller General

Enclosure

ENCLOSURE I

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PROPOSED AMENDMENT TO 26 U.S.C. § 6402 TO
AUTHORIZE IRS TO OFFSET GENERAL GOVERNMENT
DEBTS AGAINST INCOME TAX REFUNDS

Section 6402 of the Internal Revenue Code of 1954 is
amended as follows:

(1) By amending section (a) to read:

"(a) GENERAL RULE. In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax or, in accordance with subsection (c), against any liability in respect of any other debt owed the Federal government, on the part of the person who made the overpayment and shall refund any balance to such person."

Subsection § 6402(a) as amended (new language underlined):

"(a) GENERAL RULE. In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax or, in accordance with subsection (c), against any liability in respect of any other debt owed the Federal government, on the part of the person who made the overpayment and shall refund any balance to such person."

(2) By adding the following new subsection (c):

"(c) OFFSET OF GENERAL GOVERNMENT DEBTS. The Secretary or his delegate shall, in consultation with the Attorney General, enter into an agreement with the head of an agency responsible for collection of the general Government debts referred to in subsection (a) establishing procedures for the referral and offset of such debts."

ENCLOSURE I

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PROPOSED AMENDMENT TO SECTION 3 OF H.R. 3741 TO COVER
FEDERAL AGENCY DISCLOSURE OF INFORMATION IN ORDER
TO OBTAIN LOCATOR ASSISTANCE AND CREDIT REPORTS.

Section 3 of H.R. 3741 is amended by adding the following new
subsection (5):

"(5) may release information to a consumer
reporting agency in order to obtain a credit
or locator report on a person administratively
determined to be indebted to the agency."

ENCLOSURE I

ENCLOSURE I

PROPOSED AMENDMENT TO 26 U.S.C. § 6103(m)
TO PERMIT REDISCLOSURE OF MAILING ADDRESSES

Section 6103(m)(2) of the Internal Revenue Code of 1954, is amended
to read as follows:

"(2) Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in carrying out collection activities relating to such taxpayer in accordance with the Federal Claims Collection Act of 1966 or other statutory authority. Any mailing address disclosed in accordance with the preceeding sentence shall no longer be considered 'return information' as defined in subsection (b)(2) of this section."

Section 6103(m) (2) of the Internal Revenue Code of 1943, is as
amended (new language underlined; deleted language bracketed):

"(2) Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in [, and soley for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the] carrying out collection [or compromise of a Federal claim against such taxpayer] activities relating to such taxpayer in accordance with [the provisions of section (3) of] the Federal Claims Collection Act of 1966 or other statutory authority. Any mailing address disclosed in accordance with the preceeding sentence shall no longer be considered 'return information' as defined in subsection (b)(2) of this section."